

ORDER PASSED BELOW EXH. 72 IN R.C.S. No. 25/2011.

(Passed on 03.12.2018)

By this application plaintiff has sought permission to amend the plaint. Defendants have objected the said application by filling their say at Exh. 74. Heard Ld. Adv. Shri. S.V. Wani on behalf of plaintiff and Ld. Adv. Shri B.J. Jaiswal on behalf defendants.

2. Read the application. It is contended that, initially the suit was filed for simplicitor injunction, during dependency of the suit it has come on record through TILR report that, defendants have encroached 0.41R area of land within suit property. Thereafter, vide order below exh.49 plaintiff was allowed to carry out amendment for seeking possession of encroached portion. Due to said amendment now valuation of suit is also required to be corrected. Hence the plaintiff has moved present application for correction of valuation of suit as Rs. 1000/- for perpetual injunction and Rs. 1000/- for possession. Thus total valuation of suit as Rs. 2000/- and court fees as Rs. 200/- as mentioned in the application. The said court fees is already paid by the plaintiff.

3. Defendants have objected the application on grounds that, the proposed amendment can not be allowed as the plaintiff has not properly valued the suit property. The plaintiff has also not paid proper court fees. Hence defendants have prayed for rejection of the application.

4. Following points arise for the determination and findings thereon are recorded with reasons stated hereinafter.

Sr.No.	Points.	Findings.
1.	Whether the proposed amendment can be allowed?	Yes.
2.	Whether the plaintiff has correctly valued subject matter of the suit ?	Yes.
3.	Whether the plaintiff has paid proper court fees stamp?	Yes.
4.	What order ?	As per final order.

REASONS

AS TO POINTS NO. 1 to 3 :-

5. Ld. Advocate on behalf of plaintiff Shri. S.V. Wani submitted that, the proposed amendment will not change nature of the suit. The proposed amendment is only in technical in nature and will not prejudice defendants. He further submitted that, as subject matter of the suit is agricultural land valuation is carried out according to assessment and proper court fees are also paid. Hence he prayed for allowing application. On the other hand learned Advocate on behalf of defendants Shri. B.J. Jaiswal submitted that the application required to be rejected as plaintiff has not properly valued the subject matter.

6. It is necessary to note that, from perusal of order below Exh. 49 dated 31.07.2017 plaintiff was permitted to amend his plaint for seeking remedy of possession of encroached portion and also directed to pay requisite court fees accordingly. Thus it is seen from said order that, the plaintiff is bound to make proper valuation of subject matter as per said amendment and also to pay requisite court fees. Therefore, the proposed amendment is merely of technical nature and surely will not prejudice defendants.

7. Now the question arises whether plaintiff has properly valued the subject matter of the suit and whether proper court fees are paid. Section 6 (v) (b) of the Maharashtra Court Fees Act makes it clear that, in suit for possession of land subject matter of land shall be valued according to sum equal eighty times the survey assessment. Suit properties are 1. Gut no.122/2/A which is assessed at 0.15 paise, 2. Gut no.122/2/B which is assessed at 0.15 paise and 3. Gut no.122/2/C which is assessed at 0.15 paise. The plaintiff has valued subject matter at Rs. 1000/- and also paid Court fees of Rs. 200/-. Therefore, it is clear from Section 6 (v) (b) of the Maharashtra Court Fees Act the plaintiff has properly valued the subject matter and also paid proper court fees. Hence application is required to be allowed and I answered point no.1 to 3 in the affirmative, to answer point no.4 I pass following order.

ORDER

1. The application at Exh. 72 is allowed.
2. Plaintiffs are permitted to amend the plaint on or before next date and file amended copy of plaint on record.

Dhadgaon
Date : 03/12/2018

(P. H. Joshi)
Civil Judge J.D., Dhadgaon
Dist.Nandurbar.